

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NORTH DAKOTA
WESTERN DIVISION**

STATE OF IOWA, STATE OF NORTH
DAKOTA, *et al.*,

Plaintiffs,

v.

COUNCIL ON ENVIRONMENTAL
QUALITY, and BRENDA MALLORY, in her
official capacity as Chair of the Council on
Environmental Quality,

Defendants,

and

ALASKA COMMUNITY ACTION ON
TOXICS, *et al.*,

Defendant-Intervenors.

Case No. 24-cv-00089-DMT-CRH

**PLAINTIFF STATES' MOTION FOR LEAVE TO FILE
NOTICE OF SUPPLEMENTAL AUTHORITY**

Pursuant to D.N.D. Civ. L. R. 7.1(C), Plaintiff States respectfully submit this Motion for Leave to File Notice of Supplemental Authority.

Neither the Federal Rules of Civil Procedure nor the Local Rules of this Court expressly provide for the filing of notices of supplemental authority without leave of the Court. *See* D.N.D. Civ. L. R. 7.1(C) (“Parties must serve and file a motion to obtain leave of court to submit any additional filings.”); *cf. Pharm. Care Mgmt. Ass’n v. Tufte*, 326 F.Supp.3d 873, 878 (D.N.D. 2018) (noting party filed notice of a supplemental authority “[w]ith the Court’s permission”).

Plaintiff States here challenge a Council on Environmental Quality (“CEQ”) final rule implementing the National Environmental Policy Act (“NEPA”). Summary judgment briefing in

this matter concluded on October 11, 2024, and oral argument is scheduled for November 20, 2024.

On November 12, 2024, the United States Court of Appeals for the District of Columbia Circuit issued an opinion in *Marin Audubon Soc’y v. Fed. Aviation Admin.*, No. 23-1067 (D.C. Cir. Nov. 12, 2024). In that decision, despite the argument not having been made by the parties, the D.C. Circuit held that CEQ’s exercise of rulemaking authority constituted a violation of the separation of powers and was *ultra vires*, and that there were “compelling reasons” for the Court *sua sponte* “to determine the validity of the CEQ regulations once and for all.” *Marin Audubon*, No. 23-1067, slip op. at 9-10. Plaintiff States acknowledge that they did not make an argument regarding CEQ’s general rulemaking authority in their summary judgment briefing; however, the Court may find the D.C. Circuit’s recent holding to be relevant to this case challenging CEQ’s final rule.

Therefore, Plaintiffs respectfully seek leave to file the attached Notice of Supplemental Authority.

Dated: November 13, 2024

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CERTIFICATE OF SERVICE

I certify that on this 13th day of November 2024, I electronically filed the foregoing with the Clerk of the U.S. District Court for the District of North Dakota and served all parties using the CM/ECF system.

/s/ James M. Auslander